



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
COVET & MANE, LLC.	:	21-cv-7740 (JPC) (RWL)
	:	
Plaintiff,	:	
	:	
- against -	:	<u>ORDER</u>
	:	
INVISIBLE BEAD EXTENSIONS, LLC.	:	
	:	
Defendants.	:	
-----X	:	

ROBERT W. LEHRBURGER, United States Magistrate Judge.

ORDER: As discussed during the conference held on May 11, 2022, via Microsoft Teams, the Court is entering on ECF the unofficial transcript of the proceeding obtained from the Teams application. This unofficial transcript is provided at the parties' request for their off-the-record use. Any party who seeks relief from the Court based on a transcript of proceedings must request and pay for an official court-reporter transcription. Parties are instructed to review and adhere to Judge Lehrburger's individual rules and practices.

SO ORDERED.

A handwritten signature in black ink, appearing to read "R. Lehrburger".

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: May 12, 2022

New York, New York

Copies transmitted this date to all counsel of record.

00:00:00.000 --> 00:00:01.350

Judge Robert W Lehrburger
Alright so.

00:00:02.550 --> 00:00:16.020

Judge Robert W Lehrburger
We are here for covet and Maine LLC versus invisible Bead extensions, 21 CV 7740. We'll council for plaintiff. Please put in your appearance.

00:00:20.420 --> 00:00:21.230

Judge Robert W Lehrburger
You're on mute.

00:00:25.100 --> 00:00:35.880

Joel G. MacMull
Good afternoon, Your Honor, this is Joel McFall on behalf of Defendant. I am local council. With me is lead council, Mr Robert Spendlove and Mr. James Spendlove.

00:00:37.280 --> 00:00:38.870

Judge Robert W Lehrburger
Alright, welcome and.

00:00:38.420 --> 00:00:47.510

Laura-Michelle Horgan
My apologies, your honor. This is Laura, Michelle Horgan with me. Is my partner, Maurice Ross, and we are counsel for plaintiffs Covenant Maine LLC.

00:00:48.940 --> 00:00:49.440

Judge Robert W Lehrburger
OK.

00:00:52.360 --> 00:00:58.470

Judge Robert W Lehrburger
Alright, so we're here because of the discovery flare ups that have been occurring apparently.

00:01:09.390 --> 00:01:10.450

Judge Robert W Lehrburger
OK, great.

00:01:11.950 --> 00:01:42.080

Judge Robert W Lehrburger
Great. Welcome, Mr Turley. Alright, so as I said, we're here because of the various discovery disputes you've been having as reflected in your letters of ladder April. And I'm wondering if in between then and now, those issues have been resolved or to what degree. So who can tell me what? Why don't we start with IBEW who wrote the 1st letter on April 20th?

00:01:43.490 --> 00:01:52.780

Joel G. MacMull

Thank you. Your runner. Yes. Well, we have had, I believe in that interim period additional meet and confers it has been directed at.

00:01:54.220 --> 00:01:56.270

Joel G. MacMull

I guess that which we are.

00:01:57.680 --> 00:02:11.530

Joel G. MacMull

Our own discovery responses that is in so insofar as we've been able to attack that in our letter, it remains unresolved, and as of this moment, I think most of these issues, in fact all of them need to be addressed in some way or another with the Court.

00:02:12.970 --> 00:02:13.980

Judge Robert W Lehrburger

And Mr?

00:02:14.790 --> 00:02:20.900

Judge Robert W Lehrburger

As it's been love, do you have a different view organized? Oregon. I'm sorry. Who's who's speaking? Yeah.

00:02:19.040 --> 00:02:45.140

Laura-Michelle Horgan

Yeah, I can do it. Your yes, we were able to resolve a number of the issues that we had with IE responses in production, but there are several that we do need to address with the Court. I would also note that we provided a search terms to IDE and those search terms have not been run yet.

00:02:46.770 --> 00:02:47.500

Laura-Michelle Horgan

And.

00:02:47.580 --> 00:02:53.240

Laura-Michelle Horgan

Uh, we can address the open issues. You know, you're honest. Convenience.

00:02:53.980 --> 00:03:04.600

Judge Robert W Lehrburger

Alright, well I you know, I don't. I hope we're not gonna get bogged down in so much detail that we're just doing every request by every request, usually find it most useful to address.

00:03:05.790 --> 00:03:24.840

Judge Robert W Lehrburger

Topics or or types of requests or groups of requests or subject matter that may get at more than one at a time, or if there's an issue that permeates different requests because of the type of response, we can discuss that too, but I'd like to. I'm also open to what you suggest in terms of the.

00:03:31.610 --> 00:03:45.020

Joel G. MacMull

You're on. I'm. I'm sorry. I was just gonna suggest that I've done my best to actually lay it out for the court topically, and suggest that if you'll permit me, I'd like to draw the courts attention to page 2 of our letter. That's docket entry 52.

00:03:37.900 --> 00:03:38.220

Judge Robert W Lehrburger
OK.

00:03:44.760 --> 00:03:47.350

Judge Robert W Lehrburger
Yeah. So that's the subjects, right?

00:03:47.880 --> 00:04:01.780

Joel G. MacMull

Yeah. And it's essentially the eight. What I think it's relatively discrete actually, but obviously you, your Honor will suggest otherwise if you believe it is and if we could maybe March through that. And I can maybe elaborate a little bit in terms of why it's relevant and why I think it's needed.

00:03:51.990 --> 00:03:53.010

Judge Robert W Lehrburger
OK, good.

00:04:02.350 --> 00:04:17.740

Judge Robert W Lehrburger

Sure. So let's do that. So item one is a CNM's identification or lack of identification with any degree of specificity, the trade secrets that it alleges were misappropriated.

00:04:18.320 --> 00:04:48.690

Joel G. MacMull

Correct. Now I I will say, your honor, in full candor, I believe it'll be 2 weeks tomorrow when we did have a meet and confer there was an acknowledgement really from the for the first time by Mr Ross that they needed to provide this information. If you look at if you look at the responses they submitted, you'll see very clear and I print to identify those for the court, they indicate that we don't have to do it that the complaint is essentially sufficient in identifying both those trade secrets and confidential information that was purportedly.

00:04:48.790 --> 00:05:18.550

Joel G. MacMull

A misappropriated what we don't have, and notwithstanding that representation and, and certainly and, I can only hope that they will continue to acknowledge that they have that obligation. I would just ask that this point, particularly as we approach the end of discovery that you're honoring, provide for us a date certain or provide for them rather a date certain as to when we can expect that information. Obviously, I'm prepared to argue, if need be, the relevancy of it. But again, it's my understanding when we last discussed it with our adversaries that it had been conceded to.

00:05:18.980 --> 00:05:20.250

Joel G. MacMull

And so that's where we are.

00:05:20.980 --> 00:05:30.210

Judge Robert W Lehrburger

Alright, but just just just before. You're wait. Just before you were spawn. Which interrogatory is it that asks about the trade secret identification?

00:05:21.020 --> 00:05:24.110

Laura-Michelle Horgan

That's started, that's correct. And you're.

00:05:30.840 --> 00:05:36.700

Joel G. MacMull

It is interrogatory #3, your honor, and that's an exhibit A to my submission.

00:05:35.620 --> 00:05:40.190

Judge Robert W Lehrburger

Yeah. Yep. I got it. OK, alright. So Miss Horgan, you were saying?

00:05:40.840 --> 00:05:49.430

Laura-Michelle Horgan

We have agreed to do that and we are working on it and anticipate being able to do that by early next week. We're happy to have the court set a deadline because we're working on it.

00:05:50.390 --> 00:05:55.370

Judge Robert W Lehrburger

Alright, so today's the 11th. Today's Wednesday. Can you do it by the 18th of next week?

00:05:55.670 --> 00:05:56.230

Laura-Michelle Horgan

Yes, you're.

00:05:57.000 --> 00:05:57.540

Judge Robert W Lehrburger

OK.

00:05:59.070 --> 00:06:20.090

Judge Robert W Lehrburger

Yeah, you know, unfortunately in most every trade secret case I've ever seen or had, this is a dispute about whether the trade secrets have been sufficiently identified that defendant always wants more detail. The plaintiff doesn't necessarily provide that detail, but it is imperative that it be provided with specificity. So let's go ahead and do that.

00:06:20.930 --> 00:06:25.870

Judge Robert W Lehrburger

And that's by the 18th. OK, what's next?

00:06:25.140 --> 00:06:37.020

Joel G. MacMull

Yeah, but I'm sorry. Just before we move on there, if I may just have a a brief colloquy with my with with

local council, gentlemen with with that order in mind, there, there's nothing. There's nothing further we need to probe as to that issue, correct.

00:06:38.230 --> 00:06:39.260

Robert D. Spendlove

That's correct, Joe.

00:06:39.730 --> 00:06:54.540

Joel G. MacMull

OK. Thank you. The next issue, your Honor stems from and I'm generalizing here, but these terms as identified in my letter, namely beat extensions, hidden and beaded rows as well as invisible beat extensions. Our specifically identified in the complaint.

00:06:55.820 --> 00:07:24.350

Joel G. MacMull

Such that the allegation is is that our client was well aware of the use of these terms, that these were essentially universal terms and that and that it has been expressed to us and it may even be in the response. And I apologize, there's actually an error in my letter. It is exhibit A at #7. It's interrogatory #7, not #3 that asks for the identity of the persons that apparently are aware of these terms and and in response.

00:07:22.340 --> 00:07:22.660

Judge Robert W Lehrburger

Uh-huh.

00:07:27.750 --> 00:07:54.740

Joel G. MacMull

Pardon me for just a second. Just reading the response again, at least what's been communicated to us most recently. I'm sorry in the meet and confer is that these were so well known that literally millions of people are aware of these terms, as you can appreciate, your honor, we're not asking them to identify millions. We'd be satisfied with a handful, but they've not even done that. And and when we met and conferred about it as embodied in our letter, which is exhibit three, they indicated that they weren't going to give us that information. And so we find ourselves asking.

00:07:54.990 --> 00:07:55.580

Joel G. MacMull

Why not?

00:07:56.760 --> 00:07:57.270

Judge Robert W Lehrburger

Well.

00:07:58.510 --> 00:08:01.180

Judge Robert W Lehrburger

I understand the problem a little bit.

00:08:03.140 --> 00:08:12.840

Judge Robert W Lehrburger

I could be a witness to this, right? I mean it. And like you just said, it could be million person. What is it you really want? You're gonna ask each employee about.

00:08:14.080 --> 00:08:15.640

Judge Robert W Lehrburger

The those terms.

00:08:15.800 --> 00:08:24.750

Judge Robert W Lehrburger

Umm are you ask for? Are you asking for a 30B6 witness? Obviously anyone may have knowledge of those terms.

00:08:16.310 --> 00:08:17.770

Joel G. MacMull

Well, it's again, it's there.

00:08:25.480 --> 00:08:55.620

Joel G. MacMull

But well, let's let's first of all, let's understand we're talking about the terms in context. You're honor. And so so that's the first thing. These are not. And the other thing is, is that they have not asserted a genericness claim. I don't. I'm certainly prepared to do so. I don't want to sort of dive into the nitty gritty of trademark law, but one of the general proposition is, is that if a term is generic, it is not out of the box amenable to trademark registration, no matter how much secondary meaning required distinction is, it just isn't amenable. So my concern is, is.

00:08:29.430 --> 00:08:29.740

Judge Robert W Lehrburger

OK.

00:08:41.830 --> 00:08:42.140

Judge Robert W Lehrburger

Right.

00:08:55.710 --> 00:09:26.280

Joel G. MacMull

And while they have an asserted genericness, they have addressed a basis for the registration to be cancelled on two prongs, both of which I think are defective. But one of them is descriptiveness, and if they're going to take the position that descriptiveness again, I think this is what they're saying is that these invisible beat extensions, these are run of the mill terms. They are used in the industry. These are their allegations. And I would submit that we are entitled to at least a handful of individuals who purported on, you know, who could buttress their claims.

00:09:06.440 --> 00:09:06.800

Judge Robert W Lehrburger

Uh-huh.

00:09:26.390 --> 00:09:52.000

Joel G. MacMull

Who have this information? And so no matter how widespread it is, which appears to be their argument, I think at some level we're entitled to that. Now, if the answer is, your honor, we know of no such individuals, then that's certainly in his acceptable answer, and we will deal with that as it comes. But to suggest that we're not entitled to a response when the basis of their complaint is, at least in part predicated on the widespread use of these terms is just an incompatible proposition.

00:09:54.580 --> 00:09:55.030

Judge Robert W Lehrburger
Well.

00:09:55.970 --> 00:09:57.450

Judge Robert W Lehrburger
Miss Horgan, do you wanna respond?

00:09:57.880 --> 00:10:27.650

Laura-Michelle Horgan
Yes, we have met and conferred extensively on this issue and it is, as your Honor has framed it, an issue of basically every person in and even if it's limited to hair extensions, this is one of the most basic methods of applying a hair extensions to human hair using beads and putting a weft over the beads to make them quote UN quote invisible. It is on those grounds that we have sought to.

00:10:27.820 --> 00:10:30.820

Laura-Michelle Horgan
You know, led to claim to invalidate the trademark and.

00:10:32.940 --> 00:11:02.550

Laura-Michelle Horgan
OK, you have alleged claims that they are misusing and missing, like wrongfully enforcing the trademark so that is a critical part of our claim. And you know, while we could, if it was limited by the defendants to employees or stylists or some way limited to some class of persons that would be knowledgeable to our client, we would be happy to respond. But as the request is written, it is exactly as your Honor said, it would literally be every person in the hair.

00:11:02.640 --> 00:11:04.020

Laura-Michelle Horgan
I'm sorry that works with hair wax.

00:11:04.340 --> 00:11:15.460

Judge Robert W Lehrburger
Yeah, and Miss Horgan. Just give me a brief idea of the plaintiffs organization, if you will. How many employees are we talking to? Partments? Is it? A handful will just give me an idea.

00:11:15.320 --> 00:11:22.440

Laura-Michelle Horgan
It it's a very small company, Your Honor. It's a single owned female minority business and she has.

00:11:23.740 --> 00:11:26.320

Laura-Michelle Horgan

I I think maybe less than 10 employees at the moment.

00:11:27.130 --> 00:11:28.980

Judge Robert W Lehrburger

All right. And so.

00:11:30.590 --> 00:11:31.340

Judge Robert W Lehrburger

Mr.

00:11:33.360 --> 00:11:55.410

Judge Robert W Lehrburger

Mr McMahon, I I assume. Well, you'll certainly you can have the name of every employee, I suppose, but I'm going to assume that every employee has knowledge of those terms. It's if you're if you're seeking information about, well, you say use in the industry. I guess so.

00:11:57.970 --> 00:11:59.580

Judge Robert W Lehrburger

You know, I don't. I don't know.

00:12:00.460 --> 00:12:09.220

Judge Robert W Lehrburger

How you guys are all closer to me, but it seems to me it would need to be narrowed down. Otherwise you're asking. You get every probably every employee as a response.

00:12:09.780 --> 00:12:40.090

Joel G. MacMull

Well, here's here's what I would be, you know, in the first instance I think I would be happy with certainly the employees. You know, again there is a date there prior to September 19th, 2019. I I don't know obviously whether or not the employees Miss Oregon referenced are you know came on board before or after that date that may very well narrow the scope or expand it. Quite frankly the other the other thing I would want to know is again they they've sort of they've made the statement as if it is you know essentially a fed of complete.

00:12:27.700 --> 00:12:27.860

Judge Robert W Lehrburger

Yeah.

00:12:40.190 --> 00:12:47.400

Joel G. MacMull

So to the extent that they're gonna rely on any other witness that purportedly has that information, obviously we would want that witness identified whether it's in the form of.

00:12:46.770 --> 00:12:54.540

Judge Robert W Lehrburger

Well, sure. Well, that's, that's for sure. If there are witnesses, they're going to rely on for that purpose. But of course, those would be witnesses. They'd have to identify their initial.

00:12:48.050 --> 00:12:48.290

Joel G. MacMull
You know.

00:12:54.000 --> 00:13:25.210

Joel G. MacMull

Then apply anyway and went right. I just upright and then the last thing is is you know I mean I I sort of leave it to them I I have no idea at this point how many vendors they have in that sort of thing but you know let's leave it with their employees. I acknowledge that it's going to be the subject of some discussion it's somebody's deposition in terms of the prevalence of these terms so unless my Co counsel have something else to add I think in the first instance we can live with the employees and I guess by extension any other affiliate.

00:13:25.360 --> 00:13:48.510

Joel G. MacMull

And I say that because the father, I believe it is Sunny Smith, is identified in the pleadings as essentially being the the originator of the company and the daughter has essentially taken it over. So to the extent there's any successors and assigns that might have information, I would want that too. But I still think we're talking about a pretty limited scope of individuals at the end of the day.

00:13:51.490 --> 00:14:10.980

Laura-Michelle Horgan

Your Honor, we have no problem doing that. I would just note that Mr McMahon's characterization of plaintiffs enterprises incorrect Miss Smith is to Tina Smith is the principle of covenant main. She founded a covenant main on her own. Her father has his own very long standing famous.

00:13:51.560 --> 00:13:52.010

Judge Robert W Lehrburger
This one.

00:14:11.100 --> 00:14:34.770

Laura-Michelle Horgan

I'm a hair industry business, but it is entirely her own company. We have identified her father because he has sold these beads which people use in his business for I think at least 40 years. So he certainly is potentially one of our witnesses, although he resides in the Bahamas, I think so I'm not certain that he would be, but that's why we've identified him.

00:14:40.200 --> 00:14:53.980

Joel G. MacMull

Uh, what's next? Your Honor would be a certain sales information. This is request number 19 in Exhibit B. There has been and I'll explain the relevancy of this, Your Honor, that this is sort of your standard.

00:15:30.070 --> 00:15:55.520

Joel G. MacMull

The the contract from our perspective, you know the the information is relevant for three reasons.

Number one is as we maintain that insofar as there was even a contract in the formal sense, their delivery of product was insufficient or at least at least substandard. And that was the reason why ultimately we terminated the relationship. We don't even believe that's contractual, but be that as it may, the other instance is that.

00:15:56.390 --> 00:16:26.900

Joel G. MacMull

The the nature of the relationship with such that our client had stylus that had completed certain training and in the course of completing certain training, they were also then given access to the to plaintiffs website and the intention was that by virtue of being a preferred stylist, they could then access the defendant's website and buy certain product. We maintain that that didn't happen and it certainly didn't happen as designed. There were problems with.

00:16:27.370 --> 00:16:57.320

Joel G. MacMull

I think from perhaps a technical standpoint, but more importantly, there were fulfillment problems with our stylists not getting the product. And lastly, by virtue of this sort of Co arrangement, one of the things that was happening because we were referring stylists to their website to buy their product was that we intern then were getting essentially a Commission. So for every, every stylist that we referred, we would be getting a piece back as a thanks very much the the problem is, is that that didn't happen.

00:16:57.420 --> 00:17:13.840

Joel G. MacMull

And so the sales information and we're specifically who bought the product is relevant for determining at least in the last instance that a many of the people we believe about the product were our own people and it goes to satisfying the nature of the breach of the contract.

00:17:23.030 --> 00:17:31.660

Judge Robert W Lehrburger

Well, if I boil that down, you're seeking information that would serve as the basis for you to assess any commissions that you thought your folks were due?

00:17:32.890 --> 00:17:46.640

Joel G. MacMull

That's correct. Yeah. Now there's also there there's also a defensive posture for why I want the information, which is that, of course, in the nature of what's going on here, they have on the trademark piece. Well, I'm sorry. We on the trademark piece have an election.

00:17:47.770 --> 00:18:00.440

Joel G. MacMull

Which is either the disgorgement of their profit or our ability to demonstrate lost sales. Now we don't have to make that election until the time of trial, but we we do need to know. I think more specifically, the sales information than what they provided.

00:18:00.880 --> 00:18:02.110

Judge Robert W Lehrburger

Yeah, OK, Miss Morgan.

00:18:02.740 --> 00:18:32.100

Laura-Michelle Horgan

You're in our I I don't know if Mr McMahon just raised that issue as a way to put his arguments before the court, but to my knowledge, I recall that we've agreed to provide customer information and in fact, it's in plaintiffs interest to provide that information because many of the stylists that IE claimed to have referred to covenant Main, we're actually already customers of covet main anyway, so they would not be entitled to any of.

00:18:32.550 --> 00:18:54.260

Laura-Michelle Horgan

Percentage on those customers, but it didn't resolve that issue for us. We would certainly be and and I have been as far as I've been reviewing and producing discovery been producing the customer information if they want us to distill it and you know some kind of way that's not reproduced in order ordinary course of business if they would like us to distill it another way I can inquire and see if that was possible.

00:18:54.820 --> 00:19:02.430

Judge Robert W Lehrburger

But are in. Are you providing those summary information? That would be documents sufficient to show on a monthly basis what the sales and related information are.

00:19:02.890 --> 00:19:04.720

Laura-Michelle Horgan

We have certainly agreed to provide that, your Honor.

00:19:05.150 --> 00:19:05.470

Judge Robert W Lehrburger

OK.

00:19:06.110 --> 00:19:07.900

Joel G. MacMull

What makes it OK?

00:19:07.650 --> 00:19:07.970

Judge Robert W Lehrburger

Alright.

00:19:08.850 --> 00:19:10.640

Judge Robert W Lehrburger

That sounds like that's resolved.

00:19:11.280 --> 00:19:16.470

Judge Robert W Lehrburger

4th is communications with suppliers and third parties who buy, sell or market hair extensions.

00:19:17.100 --> 00:19:33.790

Joel G. MacMull

Yeah. That, your Honor goes to again the trade secret issue, which is that obviously insofar as there are

communications with third parties as it pertains to the product, you know, obviously that may very well impact the suggestion of any proprietary or trade, you know, information or or trade secret.

00:19:35.890 --> 00:19:36.480

Judge Robert W Lehrburger

It's organ.

00:19:37.810 --> 00:19:42.860

Laura-Michelle Horgan

Yes, we we have agreed to provide that. We'll do so on the date that Your Honor has set May 18.

00:19:43.500 --> 00:19:52.020

Judge Robert W Lehrburger

Great. All right. #5 market studies or documents related to planned or future development of goods for services or service?

00:19:51.390 --> 00:19:51.770

Joel G. MacMull

Yeah.

00:19:56.250 --> 00:19:58.010

Joel G. MacMull

Sorry, what? You wanna you wanna justification?

00:19:56.340 --> 00:19:56.700

Judge Robert W Lehrburger

Is.

00:19:57.500 --> 00:19:58.640

Judge Robert W Lehrburger

Is there a dispute there?

00:20:02.520 --> 00:20:03.070

Judge Robert W Lehrburger

That's number.

00:20:02.610 --> 00:20:16.860

Joel G. MacMull

We understand, we understand there to be your Honor. And again, you know, exhibit three to our letter sort of embodies what we understood their responses to be. Unless I'm missing something. I don't believe our letter was responded to of March the 29th. And it was on that basis.

00:20:05.440 --> 00:20:05.630

Judge Robert W Lehrburger

Yeah.

00:20:15.800 --> 00:20:20.850

Judge Robert W Lehrburger

OK, let's just that's fine. Let's focus on #5. Miss Horgan, #5 Morgan.

00:20:20.210 --> 00:20:35.290

Laura-Michelle Horgan

I to my knowledge, I think we discussed that on our last meeting before. Mr Ross, please correct me if I'm wrong and we're not aware of any market studies that have been done yet. And I think we told IB's Council that but Mr Roth, can you confirm that I'm correct on that?

00:20:35.110 --> 00:20:35.320

Maurice Ross

Yeah.

00:20:36.170 --> 00:20:44.920

Maurice Ross

That's exactly right. We it's simply that there are no market studies that were done. We've requested that the client let us know one way or the other and there are none, so.

00:20:44.630 --> 00:20:44.920

Judge Robert W Lehrburger

OK.

00:20:45.730 --> 00:20:47.530

Maurice Ross

That's what you know, there is nothing.

00:20:49.300 --> 00:20:53.010

Judge Robert W Lehrburger

What about documents related to planned or future development of goods or services?

00:20:54.600 --> 00:20:57.320

Maurice Ross

Well, your Honor, this is Mr Rossi on that.

00:20:58.040 --> 00:21:27.810

Maurice Ross

You know, they're asking for every document in the country company relating to all of its potential business plans, many of which have no bearing on this case whatsoever. And and it goes beyond anything if if they wanna ask for any documents relating to the, to the use of hair wefts or the the use of of the products that were the subject of the agreement between the parties, that would be reasonable. But they're now asking for everything that the company is thinking about doing in the future, no matter.

00:21:08.110 --> 00:21:08.430

Judge Robert W Lehrburger

Right.

00:21:28.250 --> 00:21:33.680

Maurice Ross

How care general it is to this case, so if they would narrow that request, we could probably work it out.

00:21:31.090 --> 00:21:31.390

Judge Robert W Lehrburger
OK.

00:21:34.290 --> 00:21:35.400

Judge Robert W Lehrburger
Got it, alright.

00:21:35.060 --> 00:21:42.920

Joel G. MacMull

Yeah, we'll, we'll, we'll, we'll, we'll so narrow it to. Obviously the the subject matter of the litigation, namely the heroquest, that's that's fine. We've never, you know.

00:21:43.950 --> 00:21:44.600

Joel G. MacMull
That's fine.

00:21:46.570 --> 00:21:50.680

Judge Robert W Lehrburger
Alrighty #6 is certain customer information.

00:21:53.370 --> 00:21:54.000

Joel G. MacMull
Certain.

00:21:57.560 --> 00:21:58.500

Joel G. MacMull
Certain customer.

00:22:02.110 --> 00:22:18.410

Joel G. MacMull

Ohh I I think this is actually forgive me now that I'm looking at this. This may have actually been since subsumed in #3 as well. Again, I my my understanding from Miss Morgan was was no, there was no objection to the identification of customers and 39.

00:22:19.630 --> 00:22:21.320

Joel G. MacMull
She wants the reasons why some pressure.

00:22:22.730 --> 00:22:28.710

Joel G. MacMull

For your hair extension products, I I think the concept is exactly the same to which they've already stipulated, so I I.

00:22:29.450 --> 00:22:34.060

Joel G. MacMull

I unless they see it, unless they see an issue with it, we certainly don't hear on it. We believe it's subsumed by.

00:22:35.020 --> 00:22:36.410

Joel G. MacMull

You know the representation already made.

00:22:38.460 --> 00:22:39.870

Judge Robert W Lehrburger

It's hard. And do you have any different view?

00:22:40.300 --> 00:22:40.760

Laura-Michelle Horgan

No. Yeah.

00:22:41.440 --> 00:22:45.910

Judge Robert W Lehrburger

Neither do I. The the request look quite duplicative of each other, quite frankly.

00:22:46.570 --> 00:22:50.760

Judge Robert W Lehrburger

And #7 related patent and invention information.

00:22:52.650 --> 00:22:53.850

Judge Robert W Lehrburger

What are we getting at there?

00:22:54.650 --> 00:23:18.070

Joel G. MacMull

Uh, we're getting at the trade secret, Your Honor, again, obviously, if it's if, if, if what they claim is proprietary or otherwise a trade secret than it is betrayed by the existence of a patent, which of course, will ultimately, if the patent issues be published. So you know, it's to flush out the. It's essentially another way to flush out the trade secrets. And obviously, if there is any patient information, we believe we're entitled to.

00:23:18.680 --> 00:23:19.110

Judge Robert W Lehrburger

Well.

00:23:19.840 --> 00:23:23.150

Judge Robert W Lehrburger

OK. But specifically related to hair extensions, right?

00:23:22.860 --> 00:23:24.020

Joel G. MacMull

Yes, of course, of course.

00:23:24.890 --> 00:23:26.690

Maurice Ross

You're. You're out of. Yeah. Address this week.

00:23:24.910 --> 00:23:25.220

Judge Robert W Lehrburger
All right.

00:23:27.120 --> 00:23:27.490

Judge Robert W Lehrburger
Sure.

00:23:28.150 --> 00:23:57.700

Maurice Ross

This this is where he's for us. The patent both sides have patents and patent applications pending relating to hair wefts and one of the basic disputes we have with our esteemed colleagues is they've refused to produce their documents relating to their pending patent applications and their file histories. The thing is, it's also relevant to the our our art made claim in this case is that the trademark of IE of invisible beads.

00:23:58.180 --> 00:24:07.070

Maurice Ross

Is descriptive in valid. It's functional. That is, it's invalid as functional, meaning that you can't get a trademark for something that's functional.

00:24:07.640 --> 00:24:07.910

Judge Robert W Lehrburger
Right.

00:24:08.230 --> 00:24:32.270

Maurice Ross

And therefore the the fact that they have patents are we have patents relating to the use of invisible beads relates to the issue of functionality. So we think both sides should be required to produce their patents, patent applications relating to this issue and it's you know we're happy to produce ours but it should should be mutual and they have not been willing to produce theirs.

00:24:32.660 --> 00:24:33.650

Joel G. MacMull
You brought her.

00:24:32.710 --> 00:24:51.620

Judge Robert W Lehrburger

But all the hold on hold on. What is it but a patent application? A trademark application are two completely different things. The patent is for the utility of the device itself. Although I suppose what you're saying is if you're seeking utility patent on the device itself, that may speak to the functionality of the device. But that doesn't necessarily speak to the functionality of the trade war.

00:24:52.430 --> 00:25:18.600

Maurice Ross

No. Ask, ask. You've got it exactly right around it the the the. If you have a utility patent pending on the functionality, it shows that the trade trademarks that they're seeking is functional, that you the exist and there's there's Federal Circuit as Supreme Court case on this, which we're happy to cite for the court

about how that on this issue of functionality, it is highly relevant to find out whether or not there are patents, utility patents pending.

00:24:52.640 --> 00:24:53.160

Joel G. MacMull

Yeah, you.

00:25:19.300 --> 00:25:28.550

Maurice Ross

Because it goes to the functionality and and in fact that's something that should be disclosed to the Trademark Office during trademark prosecution, which was not the case here.

00:25:27.330 --> 00:25:27.840

Judge Robert W Lehrburger

Well.

00:25:29.050 --> 00:25:40.700

Judge Robert W Lehrburger

But, but the term invisible beads refers to beads and so are the patents you are referring to method patents or are they literally about invisible beads?

00:25:41.240 --> 00:25:49.360

Maurice Ross

Their method patents, but their methods of using invisible beads, so they they're combination of method and product and product packs.

00:25:49.620 --> 00:26:03.700

Judge Robert W Lehrburger

Well, if they're method patents though, then what they're really that may go to trade secret issues, I suppose, but I'm not sure it goes to to trademark, but nonetheless I, you know, there may be relevance to, as I said, to trade secret and the like, Mr McMullen, what would you like to say?

00:26:04.190 --> 00:26:34.800

Joel G. MacMull

Well, I I I'd like to just separate a couple of things if I could. For the court. First of all, on the issue of functionality, I'd like to separate our request from their request because they're being blended here in a way that I think is a little, I don't know. I will say it's disingenuous, but it's not accurate to be very clear, our request of that. And again that the request does identify it as hair extensions. So it is that narrow in terms of what we're looking for is that, as I said at the beginning, the issue relates directly. The issue relates directly to the issue.

00:26:34.900 --> 00:26:55.970

Joel G. MacMull

Of trade secrets, and I don't believe for reasons we will get into when presumably we're talking about their requests of us that even in so far as we have an obligation and I submit, we don't that that's really the same thing. So the mutuality that Mr Ross is seeking here, I would submit is not applicable. And I think we've made our case as to why it is applicable with respect to their affirmative claims.

00:26:56.710 --> 00:27:17.290

Judge Robert W Lehrburger

Well, but would by any chance your pet, your clients, patents, applications and invention disclosures be relevant to trade secret in that perhaps they relate to things that may in fact not be trade secret because everyone, you know or multiple people are aware of it and know of it and use it?

00:27:18.050 --> 00:27:30.380

Joel G. MacMull

Well, I don't see. I I I frankly don't see how that could be the case. And I'll tell you why. Number one is we're talking about a pending application, no patent yet has been issued. So there's a ripeness issue I think with where they're going with the other issue is.

00:27:32.570 --> 00:27:33.040

Joel G. MacMull

Umm.

00:27:34.040 --> 00:27:37.650

Joel G. MacMull

You know, forgive me. I lost my train of thought. There are other issues.

00:27:38.000 --> 00:27:48.630

Judge Robert W Lehrburger

All right. Well, let's start. Let's let let's start then with at least what you have asked of them and you've asked for patent applications and invention disclosures.

00:27:38.030 --> 00:27:38.710

Maurice Ross

Well, you're hotter.

00:27:39.150 --> 00:27:39.680

Robert D. Spendlove

I I.

00:27:49.240 --> 00:27:54.880

Judge Robert W Lehrburger

Uh, because you think they relate to what again?

00:27:55.550 --> 00:27:56.060

Judge Robert W Lehrburger

Specific.

00:27:55.710 --> 00:28:11.610

Joel G. MacMull

Well, I think they relate to the trade secret insofar as there is any overlap between what's based in a patent application and what they're claiming is proprietary, proprietary trade secret or confidential information insofar as it's the subject matter of a patent is, your Honor is well aware it's not a trade secret.

00:28:11.950 --> 00:28:12.870

Judge Robert W Lehrburger
Right. You got to choose.

00:28:14.490 --> 00:28:15.940

Judge Robert W Lehrburger
Alright, so Mr Ross.

00:28:15.280 --> 00:28:40.070

Maurice Ross

Well, you're out of that. But, but. But it is mutual because we we one of our allegations is that they have used our proprietary information and trade secrets in applying for patents. So it it really is mutual and I I don't want to get into functionality again right now but but that really is part of this but in any because the functionality is part of the trade secrets that we're that are are alleged to be involved in this case so.

00:28:25.770 --> 00:28:27.350

Laura-Michelle Horgan
And in fact, the patent issue.

00:28:28.960 --> 00:28:29.460

Laura-Michelle Horgan
And the past?

00:28:40.240 --> 00:28:41.680

Laura-Michelle Horgan
And your Honor, I would just know.

00:28:40.940 --> 00:28:41.370

Robert D. Spendlove
It.

00:28:41.170 --> 00:28:42.810

Joel G. MacMull
Your Honor, I have. Excuse me.

00:28:42.230 --> 00:28:43.980

Judge Robert W Lehrburger
Well, one at a time, one at a time.

00:28:44.630 --> 00:28:53.570

Joel G. MacMull

I have lots to say, your honor, about the purported functionality doctrine as it's being applied here and it's not being done properly and I'll address that when we address their requests of us.

00:28:48.050 --> 00:28:49.760

Judge Robert W Lehrburger
Yeah, just that's.

00:28:53.800 --> 00:28:55.500

Judge Robert W Lehrburger

OK, Miss Horgan, you were gonna say so.

00:28:55.850 --> 00:29:17.840

Laura-Michelle Horgan

I just wanted to note that the patent issue was filed during the time that these parties were doing business with each other and also pattern in the past week has been I think, Maurice, correct me if I have this the terminology wrong, but it's been approved for publication and also it the patent is premised on the use of these invisible deeds.

00:29:19.030 --> 00:29:28.440

Laura-Michelle Horgan

And their priority issues and all sorts of things that show that these invisible beads are known to everyone in this industry. So that's what they're doing.

00:29:26.500 --> 00:29:27.020

Robert D. Spendlove

But I.

00:29:28.040 --> 00:29:30.260

Joel G. MacMull

We we provided you runner, we provided the file.

00:29:28.950 --> 00:29:29.580

Robert D. Spendlove

Let me.

00:29:29.650 --> 00:29:35.610

Judge Robert W Lehrburger

Hold on. Hold on. I wanna make sure I'm sorry. Hold on. Well, Mr spendlove. Hold on. Miss Horrigan, are you finished?

00:29:30.700 --> 00:29:32.920

Robert D. Spendlove

But let me let me jump in here because I think.

00:29:36.470 --> 00:29:40.980

Laura-Michelle Horgan

Yes. And I just wanted to say I, I we have no problem, as in, Soros said a producing our.

00:29:42.470 --> 00:29:47.270

Laura-Michelle Horgan

The patent information and are prepared to do so, but certainly you know it, it should be mutual.

00:29:47.620 --> 00:29:49.330

Judge Robert W Lehrburger

OK. All right. Now Mr spend.

00:29:48.950 --> 00:29:49.180

Robert D. Spendlove
Yeah.

00:29:50.110 --> 00:30:01.500

Robert D. Spendlove
I'm sorry, I think I can short circuit this cause I don't understand, at least in part, Mr Ross's argument. We produce the file wrapper and and identify this patent and produced it back in February.

00:30:02.790 --> 00:30:14.830

Robert D. Spendlove
So to the extent that there's additional information they're seeking, you know we we'd have to evaluate this. I am concerned that that a great deal of this suit has been almost seems like a cover to attack a patent that hasn't issued yet.

00:30:15.530 --> 00:30:40.100

Robert D. Spendlove
And so to the extent that they're looking for, you know, grounds for invalidity or other things like that with respect to our patent that has an issued yet that's not appropriate, but we produce the patent and the file history and everything that was filed with the Patent Office and and identified you know what's been produced. And that hasn't been reciprocal and and. And so this argument that this is somehow reciprocal and that that we're holding out on them. So they get to hold out on us is not accurate.

00:30:40.550 --> 00:30:53.220

Judge Robert W Lehrburger
Well, no one gets to hold out at anybody. That's not the way Discovery works. Although people like to think it does so. But Mr Spangler, you referred to the patent, are there other patent applications that may be relevant?

00:30:53.150 --> 00:30:55.730

Robert D. Spendlove
That there's one patent application that's pending, Your Honor.

00:30:56.310 --> 00:31:23.000

Judge Robert W Lehrburger
OK, so so so look, I we're talking patent applications related to hair extensions specifically it's discovery right now obviously that's sensitive information. It would have to be treated as confidential. I don't know if you have multiple layers of protection, but both sides, I agree it should be mutual. Both sides should be producing their patent application material related to this.

00:31:29.180 --> 00:31:46.520

Joel G. MacMull
Just to be clear that yeah, when you say what about experts, we're looking for the underlying documentation to the and I'm not looking for an expert report or a draft or anything like that, that of course in recent years is not even that recent anymore have been amended. But I am looking for insofar as the expert has been furnished with any factual data.

00:31:46.850 --> 00:31:47.300

Judge Robert W Lehrburger
Sure.

00:31:47.250 --> 00:31:57.010

Joel G. MacMull

They they need to produce that now and their position is well, we don't have to produce it to you or we certainly don't have to produce it now. And you know that's not the way it works is my understanding.

00:31:57.840 --> 00:31:58.410

Judge Robert W Lehrburger
This organ.

00:31:58.890 --> 00:32:06.460

Laura-Michelle Horgan

We have not, to date, retained an expert, so there's no information to provide. I think we discussed that on our prior call that this remote.

00:32:05.430 --> 00:32:13.920

Judge Robert W Lehrburger

Yeah, that's what I that's what I suspect it might be the case. So. So, yeah. So when you have your experts, any documents you produce to them.

00:32:07.200 --> 00:32:07.450

Laura-Michelle Horgan
Yeah.

00:32:14.280 --> 00:32:31.500

Judge Robert W Lehrburger

Uh certainly need to be produced. Usually most of those documents have been produced in the normal course, sometimes in discussing with your expert they come up with some additional materials and those get produced, so that seems pretty straightforward.

00:32:32.620 --> 00:32:34.170

Judge Robert W Lehrburger
I don't think there's a dispute there.

00:32:35.050 --> 00:33:04.560

Joel G. MacMull

Great. Just one more, your honor. And that is, is that in the course of our meet and confer, which was in excess of two hours, we had asked them, of course, to amend and and we've identified some of these inconsistencies between their position and what they're written. Responses are with respect to our request for production and the indication from the other side was A and they can clarify this either there was no obligation to do so or to the extent that there was an obligation, they believe that it was a waste of resources. In my 20 years of doing this, I've never.

00:33:05.020 --> 00:33:22.150

Joel G. MacMull

Heard of that? And I certainly never had a court endorsed that. There's a reason why it's a discovery device. Obviously, we think we're entitled to a position from them as to whether or not documents exist or what they are or won't produce. So I offer that up to the court in terms of sort of the last issue to be resolved from our perspective.

00:33:22.840 --> 00:33:23.400

Judge Robert W Lehrburger
Is Oregon.

00:33:24.530 --> 00:33:30.880

Laura-Michelle Horgan

Your Honor, we went through as Mr McCall said for two hours extensively the request.

00:33:32.370 --> 00:33:51.740

Laura-Michelle Horgan

We believe that it's really just make work at this point to have us, uh provide amended responses to the documents. Certainly we'd be willing to do so with Mr McMahon, could identify each and every request that he would like amended unless zeros. You have a different thought on that, but it just unnecessary.

00:33:50.150 --> 00:34:20.620

Maurice Ross

Oh wait, I thought we talked about this. I. Excuse me? I thought we sent a letter summarizing the results of the meet and confer. And I thought that was how we were gonna approach this. Normally that in my 35 years or 40 years now doing this, that's normally how we handle this, which is out at the end of the meeting, confer the parties, exchange letters that record the agreements that I thought that's what we did here. And I don't really think it's necessary or even appropriate to require everybody to go back every time and and submit new formal responses.

00:34:20.960 --> 00:34:24.580

Maurice Ross

We'll do it either way, but I thought we already submitted a letter that summarized.

00:34:23.730 --> 00:34:25.870

Laura-Michelle Horgan

We did provide a lengthy letter we did.

00:34:25.380 --> 00:34:25.670

Maurice Ross

Some.

00:34:26.320 --> 00:34:36.230

Judge Robert W Lehrburger

As long, so I agree with the latter approach, as long as the party who is agreeing to produce something or amend something is making it clear in the letter that they are doing so.

00:34:36.930 --> 00:34:55.120

Judge Robert W Lehrburger

Uh. And not just seeking a confirmation from the other side, they were. User needs to be that

confirmation or there needs to be representation that someone is doing something. In other words, we discussed these three requests and we've agreed to produce XYZ in response to them. That's fine.

00:34:55.960 --> 00:35:17.640

Robert D. Spendlove

But I will maybe if I can jump in your Honor. Start A tag team. This. But Mr Spin live here. That that is part of our concern. Because a couple of days after the meeting, confer on these issues, we sent a lengthy letter to to covet and main asking for their confirmation of this is our understanding. And if you know, and if anything is wrong, please let us know.

00:34:58.400 --> 00:34:58.700

Judge Robert W Lehrburger

Yeah.

00:35:18.480 --> 00:35:24.670

Robert D. Spendlove

It's been a month or more now and we've yet to receive any confirmation or response whatsoever to that so.

00:35:26.010 --> 00:35:53.310

Joel G. MacMull

Moreover, your Honor, I'm sorry we we've seen the confusion play out here. I mean, councils now telling us that there's no issue and it's been resolved. And yet that's inconsistent with her most recent responses. So the intention here is not to make a make work project a project, but rather very concisely have have a document that ideally we can introduce on summary judgment and indicate that either there's no documents that exist or, you know, otherwise direct the port to that which is responsive. I don't think I'm asking for anything here that's not provided already by the rules.

00:35:53.560 --> 00:36:10.490

Judge Robert W Lehrburger

No, you you need that record as you just said. Using the example that you did. But again, the letters can serve as that basis as long as they are, they'll be a chain is completed. So Miss Horrigan is there a letter to respond to not respond to.

00:36:10.910 --> 00:36:21.020

Laura-Michelle Horgan

Uh, I believe that the lengthy letter that I did send responded to the issues and Mr Ben loves letter, but I would be more than happy to take a look at that letter.

00:36:22.750 --> 00:36:24.510

Laura-Michelle Horgan

And if there are things that I.

00:36:25.600 --> 00:36:26.930

Judge Robert W Lehrburger

We're losing you a bit there.

00:36:40.650 --> 00:36:41.010

Judge Robert W Lehrburger
OK.

00:36:44.600 --> 00:37:07.690

Judge Robert W Lehrburger

Yeah. I mean, as you all know it it the federal rules many, several years ago were modified so that you couldn't just make these blanket objections and then produce stuff and leave someone not knowing what they're really getting or not. So the follow up correspondence should definitely clarify that. And if it doesn't, then it needs to be done. But it sounds like you're willing to follow up.

00:37:05.810 --> 00:37:06.150

Laura-Michelle Horgan
That.

00:37:08.110 --> 00:37:10.350

Laura-Michelle Horgan

Yes, you're on. We will do that by the 18th as well.

00:37:10.890 --> 00:37:11.800

Judge Robert W Lehrburger
OK, terrific.

00:37:13.160 --> 00:37:16.060

Judge Robert W Lehrburger

So, Mr McFall, your issues have been going through.

00:37:16.390 --> 00:37:24.160

Joel G. MacMull

I I believe they have a Mr Spendlove either one. Is there anything else open from our perspective? I don't believe so.

00:37:25.100 --> 00:37:26.460

Robert D. Spendlove

No, I think we're good runner. Thank you.

00:37:26.870 --> 00:37:27.350

Joel G. MacMull

Thank you.

00:37:27.010 --> 00:37:30.880

Judge Robert W Lehrburger

All right, Miss Horgan or Mr Ross, anything from your end? We need to discuss.

00:37:31.350 --> 00:37:34.960

Laura-Michelle Horgan

I'm gonna let Mr Ross, uh, there there really are just two broad.

00:37:36.010 --> 00:37:46.840

Laura-Michelle Horgan

Issues that we have that need to be resolved by the Court at most of which Mr Ross has already addressed, I'm just turn it over to him as to those two issues because they relate to a number of document requests interrogatories.

00:37:44.050 --> 00:37:44.370

Judge Robert W Lehrburger

OK.

00:37:47.920 --> 00:37:50.920

Laura-Michelle Horgan

So if we can cover them broadly and I think Mr Ross can, we can address.

00:37:51.430 --> 00:37:51.780

Judge Robert W Lehrburger

OK.

00:37:52.850 --> 00:38:03.930

Maurice Ross

OK. Well, we've addressed the patent application cause issues. So I I don't think we need to get into that any any longer. The Laura refreshed my recollection as to the.

00:38:05.180 --> 00:38:34.980

Laura-Michelle Horgan

Well, so we we only have the actual patent filing. We don't have what they're asking of us, which is the underlying documents related to that patent filing. So I think if it's understood that that should be a mutual disclosure then that IDE's agreeing to produce the documents related to that patent, then there is no issue about that. But if they are just saying they all they have to do is produce the the patent that we could obtain from the Patent Office. I I would take issue with that.

00:38:35.420 --> 00:38:53.690

Judge Robert W Lehrburger

Well, I'm not Miss Horgan, I'm not exactly sure what you're saying there, because there's the file wrapper that contains everything in application and responses from the Patent Office, etcetera. But you seem to loosely be referring to documents related to the pad, so I'm not sure what that refers to other than what's in the file wrapper.

00:38:53.720 --> 00:39:12.700

Maurice Ross

Yeah, we can touch you. We just need the foul wrapper for now. And what? What? What the? The other issue relating to this though is the prior art and and and the documents in their possession that show the knowledge of the at least the.

00:39:13.340 --> 00:39:21.570

Maurice Ross

The people in IE and their affiliates concerning the the use of invisible beads.

00:39:21.880 --> 00:39:22.230

Judge Robert W Lehrburger
Right.

00:39:22.570 --> 00:39:33.090

Maurice Ross

And that's, that's where we've had a problem because you know, it's not just enough for us to see the, the, the patent applications, but to the extent they have in their possession.

00:39:30.800 --> 00:39:31.140

Judge Robert W Lehrburger
Right.

00:39:33.620 --> 00:39:34.070

Judge Robert W Lehrburger
Sure.

00:39:33.960 --> 00:39:49.430

Maurice Ross

Prior articles, publications, patents of others showing the use of invisible beads over the years to tie hair wafts. That information should be produced, and they've they've objected to that.

00:39:50.670 --> 00:40:00.520

Maurice Ross

If we, you know, we we need to produce simple information. So we think this is another example of of mutuality that they should be producing whatever information, documents.

00:39:50.990 --> 00:39:51.800

Robert D. Spendlove
Your honor.

00:40:01.440 --> 00:40:07.620

Maurice Ross

That show the use of invisible beads over the years. They should be producing that cause it's at the core of the issues in this case.

00:40:08.170 --> 00:40:08.880

Judge Robert W Lehrburger
Mr McMahon.

00:40:09.740 --> 00:40:22.650

Joel G. MacMull

I'm I'm trying to understand. I think Mr Spendlove wanted to to speak, but I did have a question. I'm trying to understand from Mr Ross if what he is saying is germane to his functionality argument. Is that correct?

00:40:23.270 --> 00:40:26.860

Maurice Ross

It's absolutely and it's yes. And it's also it's also.

00:40:25.320 --> 00:40:25.550

Joel G. MacMull

OK.

00:40:26.290 --> 00:40:56.800

Joel G. MacMull

So with that so, so that's that's all I wanted to know. Your Honor, if I may about the the functionality doctrine because it is being with all due respect, it's being absolutely butchered in most cases the functionality doctrine again as it relates to trademarks relates to trade dress, essentially product configuration and the rationale is is that if the design of a product is made better by by or or there's some quality of the product, it's strength, it's likeness, it's material, it's functional.

00:40:57.120 --> 00:41:16.230

Joel G. MacMull

Having said that, there is a narrow band of doctrine that talks about functionality as it relates to word marks, which is what we have here. Invisible beat extensions, but functionality as it relates to word marks is limited to messages of information. So for example handle with care.

00:41:17.630 --> 00:41:40.840

Joel G. MacMull

Open here other other instructions or messages. This is not the the the very nature of the functional doctrine is not at issue here. We're talking about a now or a term that is at at most a now. So the the suggestion that there's some sort of application of functionality here doesn't exist. As a matter of law.

00:41:41.530 --> 00:42:06.170

Joel G. MacMull

So I don't. I don't. And and and what I would invite your honor. And I appreciate that, you know, standing on one foot this these may be difficult concepts to wrestle with. I don't your runner is gonna take me up on it but certainly we're happy to brief the issue because you know there is no functionality or at least a basis to cancel the existing registrations of registration based on functionality it's simply not an issue here.

00:42:06.800 --> 00:42:07.890

Judge Robert W Lehrburger

I yeah.

00:42:06.940 --> 00:42:35.720

Maurice Ross

Are you out of? We mentally disagree and invisible bees is exactly that type of it. It falls within that the the messaging concept. Exactly what it is. Invisible beads describes a function. It is a message of using beads to make them invisible. And that is that's precisely the the the issue here. We also have an issue of descriptiveness. It's not genericness per se, but it is descriptiveness tied into functionality and and those two issues are just at the core of this case.

00:42:36.480 --> 00:42:38.670

Joel G. MacMull

Except the script, this is not the test.

00:42:36.990 --> 00:42:40.870

Judge Robert W Lehrburger

I'm OK. No enough. I'm. I'm not sure I I frankly.

00:42:41.750 --> 00:42:47.950

Judge Robert W Lehrburger

Uh tend to agree with Mr Macmall functionality is really not an issue here.

00:42:49.150 --> 00:43:07.760

Judge Robert W Lehrburger

You know, color can be functional and I agree there is a narrow band, but here we're talking invisible beads. It's a thing, and it's either generic, but it's not necessarily because you're providing a service, but the beads themselves are. Would could be generically referred to as beads.

00:43:08.060 --> 00:43:09.540

Joel G. MacMull

Well, it's also just glad you're on.

00:43:09.900 --> 00:43:10.370

Judge Robert W Lehrburger

I'm sorry.

00:43:10.640 --> 00:43:13.470

Joel G. MacMull

It's also not alleged. Again, Genericness hasn't been alleged.

00:43:12.660 --> 00:43:25.840

Judge Robert W Lehrburger

No, no, no, that's OK. No. So it could it it it, it may be considered descriptive descriptive of a service provider descriptive of the product provided providing visible beads. Maybe it's suggestive. Who knows.

00:43:26.940 --> 00:43:33.060

Judge Robert W Lehrburger

But it's you don't need the patent stuff to make that determination.

00:43:33.870 --> 00:43:57.900

Judge Robert W Lehrburger

That said, there are trade secret at an issue. There's a it sounds like at least what was known in the art around that time is going to be relevant, particularly if the plaintiff is going to identify and say this is my trade secret, when in fact there may be materials that the defendant has that would show. No, it's not because.

00:44:00.800 --> 00:44:06.280

Judge Robert W Lehrburger

Here are some priority relates to patent, but shows this is you know what you're claiming is a trade secret is already out there in the public.

00:44:08.050 --> 00:44:27.740

Laura-Michelle Horgan

And your I just can I just make one clarification on invisible beads if you're not familiar with the industry, is somewhat of a not a misnomer, but it actually it refers to the process. It doesn't actually mean invisible AB that is invisible, it means OK, OK.

00:44:25.500 --> 00:44:45.940

Judge Robert W Lehrburger

No, that's fine. That's fine. That's why I said it. That's why I was saying, like a service. It's not necessarily just the product, but you're clarifying that indeed it is not just the product itself, so but it still begs the question then of how strong or weak is the mark that is an issue.

00:44:46.730 --> 00:44:55.600

Judge Robert W Lehrburger

Umm, but I I I happen to agree that the the patent application materials or materials related to things about.

00:44:56.430 --> 00:45:05.040

Judge Robert W Lehrburger

Whether it's a novel as a product or, you know is a has all the qualities that the patient needs.

00:45:06.480 --> 00:45:11.890

Judge Robert W Lehrburger

Is different than whether it is a defensible trademark.

00:45:13.860 --> 00:45:18.190

Judge Robert W Lehrburger

That said, again, I still think there's relevancy here in regard to the.

00:45:19.540 --> 00:45:27.230

Judge Robert W Lehrburger

The the trade secret issue, so I'm not changing my ruling in terms of the reciprocal nature of it. Having to and both sides having to produce that.

00:45:28.130 --> 00:45:29.740

Laura-Michelle Horgan

In order, if I can just clarify.

00:45:30.940 --> 00:45:36.010

Laura-Michelle Horgan

The request that we made and that are in dispute don't just relate to the patent.

00:45:37.310 --> 00:46:03.140

Laura-Michelle Horgan

The request specifically we've made is documents reflecting Mackenzie Turley's knowledge of the method by which hair extensions are attached to a person's natural hair and other documents reflecting the trolley's knowledge of prior art regarding the use of beads. And there's a number of requests of that nature and I's refused to respond to any of those requests, whether or not they relate to the pad. And frankly, I think a lot of it does not relate to really to patent.

00:46:10.440 --> 00:46:11.560

Maurice Ross

Got it, got it.

00:46:10.960 --> 00:46:16.420

Judge Robert W Lehrburger

But but how? But how? It goes? But again, how does it go to validity of the trademark?

00:46:16.970 --> 00:46:18.480

Maurice Ross

You're out. We also have.

00:46:17.480 --> 00:46:44.250

Judge Robert W Lehrburger

The trade target, the trademark the trademark, is based on the again. How is that term understood by the consumer and whether there's consumer confusion also how they perceive it? Do they perceive it as generic? They do they not and you'll have your evidence of advertising and sales and things like that. I'm I am missing a bit what it is that.

00:46:44.920 --> 00:46:49.390

Judge Robert W Lehrburger

About his knowledge of prior art.

00:46:50.220 --> 00:46:52.950

Judge Robert W Lehrburger

That necessarily ties it into the trademark.

00:46:53.400 --> 00:47:04.660

Maurice Ross

You're gonna be at me. Actually, we have claims that this involves the wrongful enforcement of unenforceable trademarks, OK, including including, for example.

00:47:05.900 --> 00:47:30.930

Maurice Ross

Antitrust claims Walker process claims and the wrongful enforcement in requires that we prove the intent to run for the knowledge concerning the art and the nature of the art is relevant to whether the the Mr Turley was, you know, was not eligible, that he was wrongfully attempting to wrongfully force and invalid trademark, that that that's at the core of this.

00:47:31.350 --> 00:47:45.790

Judge Robert W Lehrburger

I I'm not quite. I'm not. I'm not quite following there, but the what needs to be understood is what the the terms are that you're talking about are used in understood in the industry. So certainly Mr Tourneys, Turley's knowledge of.

00:47:46.850 --> 00:48:08.810

Judge Robert W Lehrburger

Using or creating invisible hair extensions is going to be relevant, he might say. That's something that's,

you know, involves XY and Z, so it's much broader than this narrow part, or it's very broad, encompasses a whole bunch of things, and therefore the trademark that's at issue itself is brought, and who knows what the argument is going to be. Certainly he can be asked about.

00:48:09.550 --> 00:48:16.370

Judge Robert W Lehrburger

Uh, what his understanding of those terms are in the industry and certainly if he has.

00:48:17.120 --> 00:48:27.210

Judge Robert W Lehrburger

Written things or has written documentation about how those terms are used in the industry that would be relevant and then sort of irregardless of whether it qualifies as prior art.

00:48:28.110 --> 00:48:50.350

Laura-Michelle Horgan

And you're the IT based on what your Honor said that I think would resolve our issue and I can identify this specific document request for Mr McMillan and Council. It was 2934, thirty 536 and 39. So if they're agreeing now to produce documents responsive to that request based on your honors ruling, then we've that issues resolved.

00:48:37.580 --> 00:48:37.910

Judge Robert W Lehrburger

Have.

00:48:51.130 --> 00:48:53.740

Joel G. MacMull

Well, I I'm sorry. First of all, can we have those numbers again please?

00:48:53.810 --> 00:49:00.240

Laura-Michelle Horgan

Sure, 29 it's in the letter that I sent to you, Mr McMahan, 2934 thirty, 536 and 39.

00:49:02.380 --> 00:49:05.530

Laura-Michelle Horgan

And this is the letter that I sent to you on May 2nd.

00:49:06.630 --> 00:49:26.090

Joel G. MacMull

We'll certainly take it under advisement. You know, it's a little difficult, you know, for us to. We're gonna have to look at that and see insofar as it relates to what your Honor's remarks, but we'll certainly let Council know if we believe that that is, you know, in line with what you're on. The instructions, Your Honor, has given or whether it falls outside the scope, as I think your Honor, also recognizes as well. So.

00:49:27.910 --> 00:49:28.340

Judge Robert W Lehrburger

All right.

00:49:29.430 --> 00:49:31.570

Maurice Ross

So the the other you're under is.

00:49:29.650 --> 00:49:29.960

Judge Robert W Lehrburger

And.

00:49:31.280 --> 00:49:35.490

Judge Robert W Lehrburger

Hold on. Hold. Hold on. When will you be able to get back to them on that?

00:49:36.210 --> 00:49:36.470

Judge Robert W Lehrburger

Miss.

00:49:36.210 --> 00:49:38.790

Joel G. MacMull

I think we should be able to do that probably by Monday. You're.

00:49:39.100 --> 00:49:40.870

Judge Robert W Lehrburger

OK, let's do that.

00:49:42.150 --> 00:49:42.640

Joel G. MacMull

Can we do that?

00:49:42.200 --> 00:49:42.640

Judge Robert W Lehrburger

Alright.

00:49:44.720 --> 00:49:51.910

Robert D. Spendlove

I was gonna say maybe we just make those reciprocal that on the 18th as well, we'll we'll respond as well. So OK, fine. Sure.

00:49:49.040 --> 00:49:49.410

Laura-Michelle Horgan

Fine.

00:49:49.980 --> 00:49:50.670

Judge Robert W Lehrburger

That that.

00:49:50.810 --> 00:49:51.260

Laura-Michelle Horgan

That's fine.

00:49:53.570 --> 00:49:53.910

Judge Robert W Lehrburger
Alright.

00:49:53.580 --> 00:49:56.530

Maurice Ross
And then the other is counter is we've requested.

00:49:57.420 --> 00:50:01.650

Maurice Ross
Uh. Documents relating to the relationship between.

00:50:03.110 --> 00:50:26.580

Maurice Ross
The the IBEW and an entity node is katsuni. Katsuni is an entity with whom I be had. Ivy has an affiliation of business affiliation and the allegation is that that during the course of that relationship between IE and katsuni, IE has wrongfully disclosed to consumers.

00:50:26.650 --> 00:50:51.510

Maurice Ross
It's suit Katsuni and Katsuni has wrongfully made use of the trade secrets and proprietary information that our client provide. ID is, but we've requested that they provide information concerning their dealings with Katsuni directed to this problem and they've refused to provide essentially anything relating to their relationship with katsuni, their contractual relationship they refuse to.

00:50:52.410 --> 00:51:21.180

Maurice Ross
To to stay, to identify the nature of that relationship and what they've provided to could Sunni and so forth. So you know, they've just essentially said consume these off the table, it's not relevant. We think Katsidis at the core of this case, we think that that's the the way they've tried to to violate their agreement with our client is to take our proprietary information and make a deal with this other company that essentially freezes out our client and brings in this other company.

00:51:21.600 --> 00:51:31.450

Maurice Ross
So the information relating to their dealings with Katsuni and their contact with them and what information provided to consume, he is of the utmost relevance to our claims in this case.

00:51:31.630 --> 00:51:36.940

Judge Robert W Lehrburger
It are you contending that katsuni is that other company that they're doing business, OK?

00:51:35.470 --> 00:51:38.660

Maurice Ross
Yes, it's one of the other companies, yes.

00:51:36.330 --> 00:51:36.620

Laura-Michelle Horgan

Yes.

00:51:39.150 --> 00:51:40.330

Judge Robert W Lehrburger

OK, Mr McMahon.

00:51:41.510 --> 00:51:44.430

Joel G. MacMull

I'm actually going to defer to Mr Spendlove on this if I may, your Honor.

00:51:44.100 --> 00:51:45.140

Judge Robert W Lehrburger

That's fine, sure.

00:51:45.010 --> 00:52:00.460

Robert D. Spendlove

Yeah. Yeah. And I think that, that, that unfortunately that's a mischaracterization. I don't think at any point we've said that we won't provide any information that's in the custody control or or a relates to IE. But but let me just pick one. I'm just picking one as a as an example here.

00:52:00.010 --> 00:52:02.110

Judge Robert W Lehrburger

You can katsuni you said IE.

00:52:02.720 --> 00:52:19.990

Robert D. Spendlove

IE IE is the named party and and so here's let let me let me illustrate this. This is a request for admission right and the request for admission is that Cassidy Currier purchased hair wefts from CNM after CNM and IE entered into an agreement. And before such agreement was terminated.

00:52:06.000 --> 00:52:06.500

Judge Robert W Lehrburger

I don't.

00:52:20.740 --> 00:52:52.790

Robert D. Spendlove

OK, so they're asking IE to admit or deny something that has to do with a third party who's not named in this, not a party with the suit, their relationship with another third party, and they want IE to answer that. And the same thing is right through all the interrogatories and all the requests for admission they want IE to answer on behalf of katsuni not what's IE's relationship with katsuni or what communications does IE have. But they're interrogatories say, you know who owns katsuni and you know what, what documents or who did katsuni talk to?

00:52:24.720 --> 00:52:25.230

Judge Robert W Lehrburger

Right.

00:52:53.050 --> 00:53:23.250

Robert D. Spendlove

And Katsuni is not a named party and they're basically asking us for, you know, relationship between one third party and another and the fact that there may be overlapping ownership in these companies doesn't mean that IE is even in a position, let alone required to produce or answer on behalf of third parties about their relationship with other third parties. There are discovery tools for this and you can't just short circuit it by saying, well, I behead a relationship and there's, you know, some overlapping ownership. So therefore you have to answer on behalf of Kitsune.

00:53:23.460 --> 00:53:28.880

Judge Robert W Lehrburger

But are you providing any discovery regarding katsuni or ibes?

00:53:29.080 --> 00:53:32.910

Judge Robert W Lehrburger

Uh. Real communications with consuming or relationship with consuming.

00:53:34.290 --> 00:53:52.350

Robert D. Spendlove

To the extent that we're providing in those answers on behalf of IBEW, right, so one of the no one of the things that came up was you know we haven't told who who was involved in developing the the product that Katsuni sells well, we've identified those people in Ibe that were involved in that.

00:53:53.230 --> 00:54:01.450

Robert D. Spendlove

And and and the response we got back as you also have to tell us who it could soon he was involved in that. And we're like what we we don't know, right. Or at least IE doesn't.

00:54:00.030 --> 00:54:22.130

Judge Robert W Lehrburger

Well, I was going to say to the extent IBEW knows and they're they're presumably are communications of some sort, maybe between the two that might have relevant information. Are you producing documents and communications within IBES control customer, your control that concern communications with katsuni on the relevance of?

00:54:23.240 --> 00:54:45.080

Robert D. Spendlove

Certainly we we haven't, I I don't think we've ever represented it. We're that if it says Katsuni, we're not going to to you know, provide that information. Our objection was they're asking us to answer requests for admissions and interrogatories basically on behalf of katsuni just and they response was well, there is overlap in, in ownership. So you're obligated to to respond to that.

00:54:45.560 --> 00:54:47.190

Judge Robert W Lehrburger

All right, Miss Morgan or Mr Ross.

00:54:47.570 --> 00:55:15.460

Laura-Michelle Horgan

Yeah, that that's incorrect. You know the complaint and we've met and conferred about this. Our complaint specifically alleges that Miss Turley and take sentence differently, was involved during the time that they were reportedly working with our client in it under agreement, they were working with a woman named Cassidy Courier, who is 1/2 of Katsuni. The other half of Katsuni is Mackenzie Turley. And.

00:55:16.840 --> 00:55:46.990

Laura-Michelle Horgan

Uh, Miss Courier also placed a large number of orders from our client during the time this agreement was going on, and it's alleged in the complaint that would happen here is the Turley's and Miss Currier basically decided to copy our client's hairline and lo and behold, in July of, I think it was 2020, Miss Turley said. Oh, we're gonna use other distributors and then shortly thereafter, the katsuni hairline became the hairline that IE was selling. It is central to our case.

00:55:47.210 --> 00:56:17.660

Laura-Michelle Horgan

And I think Mr Spenlow is being a little bit too clever by half by saying we're not identifying anyone with, we're only responding on behalf of IE, Miss Turley and Mr Turley know who they spoke with about the development of that hairline they have are hiding behind the fact that it said when responding on behalf of IDE, they need to respond to the request that are directed to them about that relationship which we have alleged replaced our client in this deal.

00:56:20.000 --> 00:56:38.270

Robert D. Spendlove

If I may, your Honor, I think there are two things that one, we we did serve and we understand that the lateness of our service, but we were submerged, amended interrogatory responses today that that identified people to whom the the IE spoke with regard to developing hairlines or or with regard to purchasing hairlines and that's been identified.

00:56:39.500 --> 00:56:48.390

Robert D. Spendlove

But but the second part that I think is important too is right there. And what Miss Horgan just said, allegedly, Cassidy Currier purchased product from CNN.

00:56:49.620 --> 00:56:56.790

Robert D. Spendlove

And they want IBEW to provide documents about the products that Cassidy Courier purchased from CNN.

00:56:57.970 --> 00:57:02.110

Robert D. Spendlove

Again, it's just that the scope of, you know if they need to know that information, they need to.

00:57:03.550 --> 00:57:05.680

Robert D. Spendlove

You know that they would have that, not IDE.

00:57:07.510 --> 00:57:09.500

Judge Robert W Lehrburger
But is the what is one of the is.

00:57:08.140 --> 00:57:11.020

Laura-Michelle Horgan
And again, I think that's narrowing. I'm asking for.

00:57:10.430 --> 00:57:21.340

Judge Robert W Lehrburger
What is one of the principles is one of the principles that Miss Horgan says was involved. I can't remember if it was McKenzie Turley or Cassidy or whoever.

00:57:22.880 --> 00:57:26.770

Judge Robert W Lehrburger
Happens to also happens to be involved with IDE.

00:57:28.620 --> 00:57:37.530

Judge Robert W Lehrburger
And also with Katsuni and are you making a distinction that that person is separate from the corporation IDE?

00:57:38.400 --> 00:57:47.050

Robert D. Spendlove
Yes, and and here's not to get a little wonky, but here's why this matters in specific with regard to requests for admission and interrogatories.

00:57:46.870 --> 00:57:47.620

Judge Robert W Lehrburger
Sure. Yeah.

00:57:47.910 --> 00:57:53.250

Robert D. Spendlove
So so if we look at it, the let me put the, the courts have said and and that that you know.

00:57:54.030 --> 00:57:54.440

Robert D. Spendlove
That.

00:57:56.260 --> 00:58:02.810

Robert D. Spendlove
Interrogatories that that depositions by, you know the 30B6 depositions are basically the equivalent of interrogatories.

00:58:03.510 --> 00:58:13.740

Robert D. Spendlove
And there's this doctor, and there's a, you know, cases recently in in this court as well as all over the country that basically say that questions and answers that exceed the scope of a 30B6 question.

00:58:14.650 --> 00:58:21.460

Robert D. Spendlove

Right, that those are treated, they're not binding on the corporation. They're treated as if they're answers given by the individual.

00:58:21.790 --> 00:58:22.160

Judge Robert W Lehrburger

Correct.

00:58:22.120 --> 00:58:36.920

Robert D. Spendlove

Right. There's no mechanism. So if in a deposition they ask Miss Turley about her relationship with Katsuni, she can answer that. And if we say, look, that's beyond the scope, it's her personal. There's no mechanism for that in response, interrogatories or pressured mission.

00:58:35.410 --> 00:58:44.380

Judge Robert W Lehrburger

Right, right, right. In other words, depending on what's being sought, if you're seeking this individual's knowledge.

00:58:45.600 --> 00:58:53.330

Judge Robert W Lehrburger

That's that person's knowledge. It's not the corporations knowledge of the person's knowledge. Then you need to serve interrogatories on them.

00:58:54.330 --> 00:59:00.540

Judge Robert W Lehrburger

And take their deposition and individually. But you can serve interrogatories on them as an individual.

00:58:54.430 --> 00:58:55.160

Robert D. Spendlove

Yeah, that.

00:59:01.470 --> 00:59:14.780

Robert D. Spendlove

Yeah, yeah. And that's our point is just not that we can't answer these, but you can't short circuit it and say that, you know, IBM has to certify response to interrogatories when it's not within the scope of IDE's knowledge just because one of the owners happens to know it and.

00:59:14.220 --> 00:59:26.720

Judge Robert W Lehrburger

Yeah, well, there's a metaphysical question. Of course, whether or knowledge is ibes knowledge that I don't know how to answer, but I can see why that could be an argument, and perhaps what Oregon has in.

00:59:17.100 --> 00:59:18.420

Robert D. Spendlove

Right. I I think, yeah.

00:59:25.220 --> 00:59:25.690

Maurice Ross

About your.

00:59:26.300 --> 00:59:41.790

Robert D. Spendlove

Right. And and like I said, under a deposition, the courts have elucidated the solution to that, which is the answer on their behalf. It's not necessarily binding on the corporation because it's not answering on behalf of the corporation. There's not. There's not that solution that I've been aware of with regard to interrogatories or requests for admission.

00:59:26.630 --> 00:59:26.950

Maurice Ross

Here.

00:59:42.320 --> 00:59:42.560

Judge Robert W Lehrburger

Right.

00:59:43.060 --> 00:59:45.180

Maurice Ross

But, but your honor in discovery.

00:59:45.900 --> 00:59:47.690

Maurice Ross

There's a basic concept that.

00:59:48.990 --> 00:59:57.360

Maurice Ross

The the the A party must produce whatever information is in this possession, possession, custody and control. And in this case.

00:59:58.240 --> 01:00:25.880

Maurice Ross

Because Mr Turley is is half of of of Katsuni and Katsuni seems seems to be an affiliate there there. We believe that IBEW and Mr Turley controls consume these. So for them and and so we've talked discovery on the issue of whether they control continuity. If they do, then Mr Turley and IE are obligated to produce that discovery since they control and possess.

01:00:13.330 --> 01:00:13.810

Judge Robert W Lehrburger

That maybe.

01:00:30.060 --> 01:00:31.890

Maurice Ross

Reality is, Mr. Kelly.

01:00:31.990 --> 01:01:02.360

Judge Robert W Lehrburger

E You can ask I VE for information that gets to whether there's essentially alter ego between any of the individuals and the company or the two companies you're talking about. IB can produce what it has on that. You can issue discovery towards katsuni, you can issue personal discovery against officers or employees of the company, but there's gonna be a limit to what the company itself lbe can represent.

01:00:35.980 --> 01:00:36.290

Maurice Ross

Yes.

01:01:02.510 --> 01:01:13.850

Judge Robert W Lehrburger

On behalf of itself versus versus others, but the information you describe may, assuming it's relevant, there are ways to get at that. It's just that it can't all come from lbe. Some of it will.

01:01:14.600 --> 01:01:25.870

Laura-Michelle Horgan

And you are the problem I think is that none of it is I. I don't think that we've received any documents today relating to Katsumi. If the understanding is that ID has to produce.

01:01:27.110 --> 01:01:30.340

Laura-Michelle Horgan

All of its communications or documents exchanged with.

01:01:31.540 --> 01:01:34.030

Laura-Michelle Horgan

Katsuni. Then we expect that those will be produced.

01:01:34.630 --> 01:01:55.100

Judge Robert W Lehrburger

Well, I, you know all communications, I think it would be about whatever the subjects are here that that are relevant and I don't know if you've asked for documents that reflect any corporate relationship between the two, I don't know, I I don't know if you've asked. Yeah. So for there may be stuff like that. Mr Spendlove, have you refused to provide things like that?

01:01:47.030 --> 01:01:47.370

Laura-Michelle Horgan

Yes.

01:01:55.790 --> 01:02:13.680

Robert D. Spendlove

No, I don't think so, your honor. And and we are. You know there there's ongoing discussions on on production and we're working through that and have produced some documents and I tend to produce others, but it was never our position that that if there's a document about katsuni, we're not giving you that because that certainly hasn't been our position.

01:02:12.710 --> 01:02:12.990

Judge Robert W Lehrburger

Right.

01:02:14.520 --> 01:02:14.700

Judge Robert W Lehrburger
Right.

01:02:14.600 --> 01:02:33.240

Laura-Michelle Horgan

And, and most specifically, Your Honor, I would want to confirm that IBM would be producing any communications with katsuni about the development of this hairline that they started selling after the agreement with my client. And I thought the development of that hairline that's specifically gets the heart of the issue.

01:02:33.710 --> 01:02:34.410

Judge Robert W Lehrburger
Mr van love.

01:02:34.960 --> 01:02:58.090

Robert D. Spendlove

Yeah, I I we don't have an objection in principle. I don't know what documents there are there because the relationship that's assumed here is I don't think accurate in that that IE bias, hair extensions and resales on behalf of katsuni hair extensions. But those aren't hair extensions that lbe makes or produces or procured or they they buy and sell on behalf of them.

01:02:57.820 --> 01:03:13.070

Judge Robert W Lehrburger

Regardless, it seems like they're going to be communications that go to hairline extensions that raise issues about the trade secrets of the trademark or whatever. So we, regardless of what the relationship actually is, if they're communications with this other company about.

01:03:02.690 --> 01:03:02.930

Robert D. Spendlove
Yeah.

01:03:13.830 --> 01:03:16.980

Judge Robert W Lehrburger

The alleged trade secrets where they hairline extensions they would be produced.

01:03:14.290 --> 01:03:14.730

Robert D. Spendlove
Yeah, yeah.

01:03:17.690 --> 01:03:18.380

Robert D. Spendlove
Yeah. Yes, you're.

01:03:18.780 --> 01:03:19.740

Judge Robert W Lehrburger
OK, good.

01:03:20.890 --> 01:03:27.960

Joel G. MacMull

Your, Your Honor, I, I, I I'm sorry. I I didn't mean to interrupt. I I was presumptuous and thinking that we were finished, but that may not be true. I'm sorry.

01:03:28.420 --> 01:03:31.780

Judge Robert W Lehrburger

Sorry, Miss Horgan. Anything else when you're on or Mr Ross?

01:03:32.490 --> 01:03:36.730

Maurice Ross

No, I I don't think so. You're under. That's Horgan could think of something that I'm missing.

01:03:37.310 --> 01:03:45.630

Laura-Michelle Horgan

No, you are the only other thing is that we sent revised search terms to IDE on Friday.

01:03:46.850 --> 01:03:54.750

Laura-Michelle Horgan

And we haven't heard back from them yet. I assume that we will hear back from them and hopefully there will be no issues, but that is something that is outstanding.

01:03:55.680 --> 01:03:57.890

Judge Robert W Lehrburger

Mr McMahon, can you just speak to the timing on that?

01:03:58.450 --> 01:04:08.220

Joel G. MacMull

I I can't, unless the court feels otherwise. Let's let's agree that we will respond to them. Honor before the 18th. With that, you know, with any modifications, or at least our comments, OK.

01:04:07.960 --> 01:04:10.720

Judge Robert W Lehrburger

OK, alright. And you were about to raise something else.

01:04:11.090 --> 01:04:38.480

Joel G. MacMull

I I was, your honor. Forgive me. I was a little. I jumped the gun there my notes and I just wanna make this clear. My notes are unclear. And if it's clear to anyone else, please let me know as the extent to which the plaintiffs are required or you are requiring them to amend their written responses to our first request for productions. We talked about that. We talked about the letter. I don't want to reply the same ground, but I do just want to put as far as it's going to persuade the judge to go one way or the other.

01:04:38.840 --> 01:04:54.480

Joel G. MacMull

I we we do not believe that the letter corresponds to date has been sufficient and for all the reasons I

previously raised, we would respectfully request that they amend their responses in a single document so that we know ultimately what exists, what doesn't exist, and what they've agreed to respond to.

01:04:56.760 --> 01:04:58.150

Judge Robert W Lehrburger

How many document requests are the?

01:04:58.860 --> 01:05:00.420

Laura-Michelle Horgan

That's almost 100.

01:05:01.430 --> 01:05:03.980

Joel G. MacMull

Ohh, I don't think there's that many. There are 50.

01:05:03.630 --> 01:05:05.490

Laura-Michelle Horgan

Well, it's more than the.

01:05:05.990 --> 01:05:10.080

Joel G. MacMull

There's sixty 6072.

01:05:10.920 --> 01:05:11.410

Judge Robert W Lehrburger

Uh-huh.

01:05:12.780 --> 01:05:24.230

Judge Robert W Lehrburger

And you know, I'm not sure. Maybe you could. Uh again with respect to the correspondence. Tell Miss Horrigan what it is. That's not sufficient about what's stated in.

01:05:25.390 --> 01:05:37.080

Judge Robert W Lehrburger

The letters and if you know, maybe I date. There are things that can be done to confirm or deny or well confirm or deny and follow up that would cement that.

01:05:38.280 --> 01:06:06.560

Judge Robert W Lehrburger

I frankly have never been in a case and I litigated for 27 years, or anyone ever redid their responses to document requests in the official document request way as opposed through document. Follow the letter, follow up. So I'm not inclined to do that if there are specific requests where you have real concerns because it's a particularly, you know, particularly important request where you really want to know, is there anything else?

01:06:07.350 --> 01:06:14.580

Judge Robert W Lehrburger

And they it's not clear then, you know, say I need you to tell me for this. Is there anything else or have you produced everything?

01:06:14.950 --> 01:06:20.480

Joel G. MacMull

Very good. Then I will review the correspondence and identify that which we believe. We're still entitled to. And by way of answer, that's fine.

01:06:20.450 --> 01:06:21.450

Judge Robert W Lehrburger

All right, great.

01:06:22.250 --> 01:06:27.600

Maurice Ross

Your Honor, me, I raised this issue. We we received a we. We've noticed that positions.

01:06:22.440 --> 01:06:22.710

Judge Robert W Lehrburger

Or.

01:06:28.330 --> 01:06:59.290

Maurice Ross

Uh, and on condition that obviously we we don't want to bring witnesses back twice and we received a letter from them late last week saying, well, we'd like to produce our witnesses on certain dates, early dates in June. The problem with this and we we all wanna expedite the completion of discovery, but we don't want to be forced to take these steps positions before we we resolve these discovery issues and get their documents because obviously that would be prejudicial. So I I think we need a little clarification from the court that the court.

01:06:59.360 --> 01:07:08.870

Maurice Ross

Before we, we go down the road of the depositions of the principle witnesses, in this case, both sides ought to, you know, make a good faith effort to complete producing their documents.

01:07:10.230 --> 01:07:22.490

Joel G. MacMull

Yeah, you're my only objection to this is that I don't believe this is properly before the court. This has never been addressed with us previously. And I have, you know, I'm happy to discuss it with the other side. But with all due respect, I don't believe it's properly before your honor at this time.

01:07:10.320 --> 01:07:10.650

Judge Robert W Lehrburger

Mr.

01:07:22.710 --> 01:07:42.810

Judge Robert W Lehrburger

Right. It's not right. So I do think the party should discuss that. But I think the principle in general is a good one that you don't wanna be deposing people when you're in the middle of the document production, unless there's a pretty good reason to do so. Or if there's agreement to bring somebody back. But I'll leave you to all to figure that out. And if you've got problems, you'll come back to me.

01:07:43.460 --> 01:07:44.000

Joel G. MacMull

Very good.

01:07:44.590 --> 01:07:45.420

Maurice Ross

Thank you around.

01:07:44.660 --> 01:07:45.310

Joel G. MacMull

Thank you, brother.

01:07:46.520 --> 01:07:55.360

Judge Robert W Lehrburger

Alright, well it was nice getting to know you all a little bit. Hopefully you will be able to work out your disputes going forward, but if not I'm here. Alright, I wish.

01:07:54.740 --> 01:08:04.170

Joel G. MacMull

Thank you. You brought one one final question. I'm sorry, were we on the record, is there is this being transcribed or the recording we can get a a transcript of this or will this realized in an order for?

01:07:55.250 --> 01:07:55.860

Laura-Michelle Horgan

Thank you.

01:08:01.940 --> 01:08:02.670

Judge Robert W Lehrburger

Yeah.

01:08:03.840 --> 01:08:15.320

Judge Robert W Lehrburger

We can download, we can download a transcription and load that up. If you would like. It won't be. It won't necessarily be the official transcript, but I can put it on there as an unofficial one.

01:08:16.070 --> 01:08:19.190

Joel G. MacMull

OK, great. And and the court will do that as opposed to us ordering it, is that right?

01:08:19.750 --> 01:08:42.360

Judge Robert W Lehrburger

Yeah, I'll just because what I'm going to do is we're gonna print out the recording of all from teams that which tends to be OK, you know, the words that are garbles, it doesn't necessarily get everything. If you think you want an official transcript at any point, then you would have to request one from the court reporters, and they would have to do an official transcription.

01:08:43.120 --> 01:08:46.440

Joel G. MacMull

Derive from this recording on teams obviously. Right. OK.

01:08:46.090 --> 01:08:51.990

Judge Robert W Lehrburger

Right. So if you're content in the first instance with an unofficial one, you know I can print this out and put it up for you.

01:08:52.360 --> 01:08:54.500

Joel G. MacMull

Ohh that would be great. Your honor. Thank you.

01:08:54.160 --> 01:08:54.470

Judge Robert W Lehrburger

OK.

01:08:54.760 --> 01:08:55.200

Laura-Michelle Horgan

Your honor.

01:08:56.280 --> 01:08:58.310

Judge Robert W Lehrburger

All right. We're adjourned. You well.

01:08:58.370 --> 01:08:59.490

Laura-Michelle Horgan

Thank you and have a good day.

01:08:58.760 --> 01:09:00.190

Joel G. MacMull

Thank you. You too, runner. Bye bye.